



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0452

Austin Caperton, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: Chemours Company FC LLC
Ms. Michelle Young
901 West Dupont Avenue
Belle, WV 25015

DATE: October 1, 2020

ORDER NO.: HW-21-001

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code 22-18-1 et seq. to Chemours Company FC LLC (hereinafter "Chemours").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Chemours operates a chemical plant located in Belle, Kanawha County, West Virginia and has been assigned EPA ID No. WVD005012851. Chemours is a large quantity generator of hazardous waste. Hazardous Waste Permit No. WVD005012851 was issued on March 6, 2014 to allow the facility to operate hazardous waste management units, which consist of one (1) hazardous waste storage tank and two (2) hazardous waste container storage areas.
2. On December 20, 2018, West Virginia Department of Environmental Protection (WVDEP) and Chemours entered into Order No. HW-19-003. The Order was issued in response to Chemours' violations of WV State Code and the Code of Federal Regulations.
3. On June 10, 2020, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the Code of Federal Regulations and permit conditions were observed and documented:

Promoting a healthy environment.

- a. 40CFR262.15(a)(4) - Chemours failed to keep multiple satellite accumulation containers closed in the central machine shop.
- b. 40CFR262.17(a)(5)(i)(A) - Chemours failed to label multiple containers of hazardous waste in the consolidated drum storage area with the words "Hazardous Waste."
- c. 40CFR262.17(a)(5)(i)(B) - Chemours failed to label multiple containers of hazardous waste in the consolidated drum storage area with an indication of the hazards of the contents.
- d. 40CFR262.17(a)(5)(i)(C) - Chemours failed to label multiple containers of hazardous waste in the consolidated drum storage area with an accumulation start date.
- e. 40CFR264.195 - Chemours failed to perform multiple daily tank system inspections for the DMS Tank and for VAZO Tank No. 41.
- f. 40CFR264.174 - Chemours failed to perform multiple weekly VAZO container storage area inspections.
- g. Module II-C-4 - Chemours failed to maintain inspection records for the acrylics tanker. There had been no documented inspections since June 2018.

As a result of the aforementioned violations, Notice of Violation (NOV) No. 2006-009 was issued to Chemours.

4. On September 22, 2020, WVDEP personnel met with Chemours representatives to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with West Virginia State Code 22-18-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. Chemours shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Chemours shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Chemours will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVD005012851 and Order No. HW-21-001. The plan of corrective action shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.


3. Because of Chemours' Code of Federal Regulations violations and permit condition violations, Chemours shall be assessed a civil administrative penalty of fourteen thousand one hundred ninety-three dollars (\$14,193) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Chemours hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-18-20. Under this Order, Chemours agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Chemours does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Chemours other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Chemours shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Chemours becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Chemours shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Chemours intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Chemours (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Chemours of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Chemours to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Chemours, its successors and assigns.
7. This Order shall terminate upon Chemours' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


~~Ms. Michelle Young~~ Ms. Ashley Rine
Chemours Company FC LLC

10/12/2020
Date

Public Notice begin:

Date

Public Notice end:

Date

Katheryn Emery, P.E., Acting Director
Division of Water and Waste Management

Date

Photo Attachment



6/10/2020 - Consolidated Drum Storage area. Six drums of hazardous waste not labeled.

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party:

Chemours Company FC LLC

EPA ID Number:

WVD005012851

Generator Classification:

TSD

Enter FOF# and rate each finding as to Potential and Extent.

| 1) | Potential for Harm Factor | Factor Range | FOF# | | | | | | | | | | | | |
|----|--|--------------|------|------|------|------|------|------|------|----|----|----|----|----|----|
| | | | 3.a. | 3.b. | 3.c. | 3.d. | 3.e. | 3.f. | 3.g. | | | | | | |
| a) | Harm to RCRA Program | 1 to 3 | 1 | 1 | 1 | 1 | 2 | 2 | 1 | | | | | | |
| b) | Probability of Exposure | 0 to 3 | 1 | 1 | 1 | 1 | 1 | 1 | 0 | | | | | | |
| c) | Potential Seriousness of Contamination | 1 to 3 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | | | | | | |
| | Average Potential for Harm Factor | | 1 | 1 | 1 | 1 | 1.3 | 1.3 | 0.7 | No | No | No | No | No | No |
| 2) | Extent of Deviation Factor | Factor Range | | | | | | | | | | | | | |
| | Degree of Non-Compliance | 1 to 3 | 1 | 1 | 1 | 1 | 2 | 2 | 1 | | | | | | |

Potential for Harm Factors

1a. - Harm to the RCRA Program

- All regulatory requirements are fundamental to the continued integrity of the RCRA Program
- Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit

1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release

1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

[illegible]

| | | Extent of Deviation from Requirement | | |
|--|-----------------|--------------------------------------|--------------------|--------------------|
| | | Major | Moderate | Minor |
| Potential for Harm to Human Health or the Environment | Major | \$8,000 to \$10,000 | \$6,000 to \$8,000 | \$5,000 to \$6,000 |
| | Moderate | \$4,000 to \$5,000 | \$3,000 to \$4,000 | \$2,000 to \$3,000 |
| | Minor | \$1,500 to \$2,000 | \$1,000 to \$1,500 | Up to \$1,000 |

| FOF # | Potential for Harm | Extent of Deviation | Penalty | Multiple Factor | Base Penalty |
|---------------------------|--------------------|---------------------|---------|-----------------|-----------------|
| 3.a. | Minor | Minor | \$1,000 | 1 | \$1,000 |
| 3.b. | Minor | Minor | \$1,000 | 1 | \$1,000 |
| 3.c. | Minor | Minor | \$1,000 | 1 | \$1,000 |
| 3.d. | Minor | Minor | \$1,000 | 1 | \$1,000 |
| 3.e. | Moderate | Moderate | \$3,330 | 1 | \$3,330 |
| 3.f. | Moderate | Moderate | \$3,330 | 1 | \$3,330 |
| 3.g. | Minor | Minor | \$670 | 1 | \$670 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| 0 | FALSE | FALSE | FALSE | 1 | \$0 |
| Total Base Penalty | | | | | \$11,330 |

Penalty Adjustment Factors

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factors

6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase

6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.4 - History of Non-Compliance - 0% to 100% increase -
based upon review of last three (3) years - Warning = maximum of 5% each,
N.O.V. = maximum of 10% each, previous Order = maximum of 25% each

6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease

6.2.b.6 - Economic Benefit of non-compliance

6.2.b.7 - Staff Investigative Costs

6.2.b.8 - Other relevant factors determined on a case-by-case basis

Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

| Penalty Adjustment Factor | % Increase | % Decrease | Base Penalty Adjustments |
|--|------------|------------|--------------------------|
| 6.2.b.1 - Good Faith - Increase | | | \$0 |
| 6.2.b.1 - Good Faith - Decrease | | 10 | (\$1,133) |
| 6.2.b.2 - Willfulness and/or negligence | 10 | | \$1,133 |
| 6.2.b.3 - Cooperation with the Secretary | | | \$0 |
| 6.2.b.4 - Compliance/noncompliance history | 25 | | \$2,833 |
| 6.2.b.5 - Ability to Pay an Administrative Penalty | | | \$0 |
| 6.2.b.6 - Economic Benefit (flat monetary increase) | \$0 | | \$0 |
| 6.2.b.7 - Staff Investigative Costs (flat monetary increase) | | | \$0 |
| 6.2.b.8 - Additional Other Factors - Increase (flat monetary increase) | | | \$0 |
| 6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease) | | | \$0 |
| Public Notice Cost (flat monetary increase) | \$30 | | \$30 |
| | | | |
| Penalty Adjustments | | | \$2,863 |
| Penalty = | | | \$14,193 |

| Estimated Economic Benefit Item | Estimated Benefit (\$) |
|--|------------------------|
| Monitoring & Reporting | |
| Installation & Maintenance of Pollution Control Equipment | |
| O&M expenses and cost of equipment/materials needed for compliance | |
| Permit Application or Modification | |
| Competitive Advantage | |
| Estimated Economic Benefit | \$0 |
| Comments: Economic benefit not warranted. | |